

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7780 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAVJI NANJI PARMAR

Appearance:

MR HARDIK C RAWAL for Petitioner

MR GK RATHOD for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/11/1999

ORAL JUDGEMENT

Leave to annex the Default Card.

Heard the learned advocates for the respective parties.

The petitioner before this Court is the Gujarat

State Road Transport Corporation [hereinafter referred to as, 'the Corporation'] and challenges the judgment and award dated 8th February, 1999 passed by the learned Labour Judge, Junagadh in Reference (LCJ) No. 54 of 1996. The respondent is the workman concerned.

The workman was appointed in the Corporation as a Conductor. On 28th December, 1994, while he was on duty on Ahmedabad-Dhoraji route, his bus was checked by the Inspecting party and on inspection, 10 passengers were found to be travelling without tickets. The non-issuance of the tickets was explained by the workman that the said ten passengers were the relatives of the workman and, therefore, no tickets were issued. The workman having thus committed the misconduct amounting to loss of revenue to the Corporation, a disciplinary action was held against him and after holding the due inquiry, under order dated 21st June, 1995, he was dismissed from service. The said order was confirmed in appeal on 4th January, 1996. Feeling aggrieved, the workman raised an industrial dispute which was referred to the learned Labour Judge, Junagadh and was registered as above. The learned Labour Judge having tried the reference upheld the disciplinary action held against the workman and also the finding of guilt recorded against the workman. The learned Judge, however, was of the view that the order of punishment viz., dismissal from service, was harsh. He in exercise of his power conferred under Section 11-A of the Industrial Disputes Act, 1947 [hereinafter referred to as, 'the Act'], set-aside the order of dismissal from service. The workman has been ordered to be reinstated in service with 50% of the backwages. Therefore, the petition.

Learned advocate Mr. Rawal appearing for the Corporation has submitted that imposition of punishment is a managerial function and the Court should not interfere with the same lightly. In the present case, the workman had served the Corporation for 19 years and during the said 19 years, the workman had committed 21 defaults for which various kinds of penalties were imposed upon him. Earlier, in the year 1985, he was dismissed from service for a similar default, however, his case was considered sympathetically and was reinstated in service by imposing a minor penalty. In spite of the compassion shown to the workman, he has committed further 13 defaults after his reinstatement in service. The workman, therefore, does not deserve sympathy of the Court and the order of dismissal ought to have been confirmed by the learned Judge.

In response to the notice issued by this Court, the workman has appeared through the learned advocate Mr. Rathod. Mr. Rathod has relied upon the judgment of the Hon'ble Supreme Court in the matter of Bihar State Road Transport Corporation v. Kameshwar Prasad Thakur, [reported in 1999 (1) LLJ 1339 = 1999 AIR 1999 SCW 1600]. He has further submitted that the very nature of duties of the conductors are such that if no tickets are issued at the time of inspection, they can be said to have committed a default.

In the matter of Bihar State Road Transport Corporation [Supra] , the relevant rule provided that for non-issuance of tickets to a number of passengers less than 25% at the time of inspection, the punishment of fine alone can be imposed upon the conductor. In absence of a similar rule, the said judgment cannot be an authority on the subject matter.

I am of the view that the learned Labour Judge has shown undue sympathy towards the workman. It was imperative for the learned Labour Judge to consider the past record of the workman before interfering with the penalty imposed upon the workman. Having upheld the disciplinary action held against the workman and the finding of guilt recorded against the workman, the order of penalty ought not to have been lightly interfered with. In the present case, considering his past record, the workman appears to be incorrigible. In spite of several punishments, ranging from censure to withholding of increments with permanent effect for various periods, the workman does not appear to have improved his conduct. It also appears that by various punishments, the yearly increment of the workman for around 15 years has been withheld permanently. Further, though the guilt has been established against the workman, no punishment has been imposed upon the workman.

Petition is, therefore, allowed. On the facts and in the circumstances of the case, the Award of the learned Labour Judge is modified as under :-

The order of reinstatement in service is confirmed. The Corporation will reinstate the workman in service within a period of six weeks from today. The period from the date of termination of service till the date of reinstatement in service, shall be treated as the period of extra-ordinary leave without pay. The workman shall not be entitled to the backwages for the said period. For the guilt proved against the workman, having regard to his past service record, all his future

increments shall be withheld.

This order is made on condition that the workman will, within a period of three weeks from today, give an undertaking to this Court that in future he shall not commit any misconduct in connection with issuance of tickets to the passengers. A copy of the said undertaking shall be furnished to the Disciplinary Authority. In the event the workman fails to give such an undertaking within a period stipulated hereinabove, the punitive termination of service of the workman shall stand confirmed and this order shall stand modified to that extent. Rule is made absolute in the above terms. The parties shall bear their own costs.

Prakash*